IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1869 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? Nos. 1 and 3 to 5 No. No.2 Yes.

VENILAL GOVINDJI NAGAR

Versus

AMBARAM NANBHAI

Appearance:

MR BHARAT J SHELAT for Petitioners

MS VASUBEN P SHAH for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 15/07/98

ORAL JUDGEMENT

This is tenant's revision under section 29(2) of the Bombay Rent Act.

The brief facts essential for the disposal of this revision are as follows :

The portion of an open land belonging to the landlord-respondent was letout to the defendant No.1 revisionist on annual rent of Rs.8/-. The defendant No.1 raised super structures out of his own fund. There was

allegation that the defendant No.1 also encroached upon another land belonging to the landlord. The suit for eviction was filed by the landlord on five grounds. The first was that the defendant No.1 was in arrears of rent with effect from 1.4.1970. Notice was given on 13.4.1976. The arrears were not paid to the landlord by the defendant No.1 within a month of service of notice nor any reply to the notice was given. The second ground for the eviction was that the tenant in chief was creating nuisance or annoyance to the landlord. The third ground for eviction was that the land was reasonably and bonafide required by the landlord for raising his building thereon. The fourth ground for eviction was that the defendant No.1 had illegally sub-let the land in question to the defendant No.2 and the last ground was denial of title of the landlord by the tenant defendant No.1. Ofcourse this plea was taken during the pendency of the suit by getting the plaint amended.

The suit was resisted by the defendant No.1 denying the allegation of nuisance, sub-letting and being in arrears of rent. It was also denied that the land in suit was reasonably and bonafide required by the landlord for erecting his building. Regarding denial of title the case of the tenant in chief in the written statement was that he is not only the owner of super structure but also the owner of the land in as much as the land was purchased from the father of the plaintiff landlord.

The Trial Court negatived the contention of the landlord on the allegation of nuisance, sub-letting denial of title and the land being bonafide required by him for constructing the building. However, regarding arrears of rent the Trial Court found that the case was covered by section 12(3)(b) of the Bombay Rent Act, and that the defendant was not entitled to any protection under the aforesaid section, as such decree for eviction was passed.

The matter was taken up in Appeal. The Appellate Court dismissed the Appeal without disturbing any finding of the Trial Court. It is, therefore, this revision.

The findings of the two Courts below regarding allegations of landlord on nuisance, sub-letting, denial of title and reasonable and bonafide requirement of the landlord were not agitated in this revision. Hence, these allegations which were negatived by the two Courts below have become final.

So far as the decree of eviction on the ground of arrears of rent is concerned it was assailed by learned Counsel for the revisionist on the ground that the Trial Court fell in error in rejecting the application dated 16.6.1981 moved by the revisionist seeking amendment in his written statement. In short, proposed amendment in the written statement was nothing but denial of title of the landlord and setting up his own title on the basis of title deed.

Learned Counsel for the revisionist has vehemently argued that this amendment application should have been allowed by the Trial Court and the Appellate Court also committed an error of law in not allowing the amendment and remanding the case. Reliance has also been placed upon a case of Satish Chandra Saxena and others Vs. Krishna Prasad Saxena and another, AIR 1989 (Allahabad) Pg.34. Apparently this case is distinguishable on facts. Here the defendant in the original written statement pleaded that he was owner of the land in dispute while in proposed amendment he wanted to delete the plea by incorporating another plea that he became owner by adverse possession. Such amendment was granted by the High Court on the reasoning that the proposed amendment did not amount to resiling from previous admission. The defendant in the original written statement already pleaded that he was owner of the land. If by subsequent amendment he wanted to delete that plea and to assert that he is owner by adverse possession the plea of ownership was not given up by the proposed amendment. Instead of alleging that he was owner by title deed he wanted to plead that he became the owner by adverse possession. Thus the High Court found that it was not a case where the defendant wanted to resile from his earlier admission as such amendment was granted. In the case before me it is not a case where any previous admission was sought to be withdrawn.

Certain observations and principles are to be kept in mind while granting amendment. The Courts time and again have laid down that in matters of granting amendment the Court should take liberal view but that does not mean that every amendment should be granted. Cardinal principle for granting amendment is that such amendment is essential for determination of real controversy between the parties. Further, such amendment should be bonafide. If on the other hand the amendment is found to be malafide, it is liable to be rejected. Simply because the amendment application is moved at a late stage this does not constitute a good and effective ground for rejecting the amendment application. Further,

if a plea has already been taken either in the plaint or in the written statement and the said plea is not vague the amendment cannot be allowed simply on asking of a party that he wants to incorporate such amendment. Unless there is ambiguity in the existing pleading which requires clarification delayed amendment should not be granted. Likewise if amendment is moved to delay the proceedings and disposal of the suit it should always be refused.

If these principles are kept in mind there should be no difficulty in coming to the conclusion that the amendment application was rightly rejected by the two Courts below.

It may also be mentioned that no revision was filed against the order of the Trial Court rejecting the amendment application. The said order of rejection was duly tested by the Appellate Court in Appeal and that order does not suffer from any error of law. The reason is that the lower Appellate Court correctly observed that the said application was moved at a very late stage on the date of arguments after closing of evidence by the parties and it was an attempt to delay the disposal of the suit. It also rightly observed that there was specific stand and pleading in the written statement of the defendant No.1 that he was the owner not only of the super structure but also of the open land. In face of this plea there was definite case pleaded in the written statement that the defendant No.1 was the owner of the land as well as super structure. The contention that the amendment was necessary at a late stage because when the written statement was filed the document of title was not available to the plaintiff is not sound. The document of title is nothing but evidence and evidence is not to be pleaded in the written statement. If for some reason or the other the document of title, which should have been with the defendant, was misplaced or was not traceable it could have been filed as additional evidence before the Trial Court by moving application. Likewise request could be made before the Appellate Court for accepting additional evidence in Appeal. That was not done.

Since the plea of defendant's ownership was already clear and specific in the written statement it required no clarification and for this reason also the amendment could be rejected. Likewise the proposed amendment was not essential for disposal of real controversy between the parties in as much as such pleading was already contained in the written statement.

Learned Counsel for the revisionist contended that in case amendment would have been granted the jurisdiction of the Rent Court would have been ousted. However, I find that no such plea was taken in the proposed amendment which was sought at a very late stage. Consequently the plea of want of jurisdiction cannot be permitted to be raised at this stage without any pleading to that effect.

Even if such plea is permitted to be raised it has no substance. Jurisdiction of the Court is to be determined on the allegations made in the plaint and the defendant simply by denying the jurisdiction of the Court cannot say that the jurisdiction is actually ousted. It was a case where eviction was sought on the grounds contemplated under sections 12 and 13 of the Bombay Rent Act. It was in respect of open land. Such suit was prima facie triable by the Rent Court. If the dispute regarding relationship of landlord and tenant was proposed to be raised that dispute also could be decided by the Rent Court. Incidentally the question of title also could be seen by the Rent Court in denial of relationship of landlord and tenant between the parties.

For the reasons given above, I do not find any substance in the contention that the amendment application was wrongly rejected.

It was also contended that if the amendment would have been allowed probably the defendant No.1 would not have been required to pay any rent. However, this possibility on the facts and circumstances of the case also does not arise.

So far as the finding regarding applicability of section 12(3)(b) of the Act is concerned, I find that the judgments and decrees of the two Courts below on this point do not suffer from any error of law. According to the plaintiff it was annual tenancy at Rs.8/- . Consequently section 12(3)(a) was not attracted. Section 12(3)(a) is attracted only in monthly tenancy. When it was not a case of monthly tenancy then failure of the defendant to reply notice and his further failure to raise dispute regarding the standard rent is of no consequence. Section 12(3)(b) on the facts and circumstances of the case is attracted because it was not pleaded by the tenant that rent claimed in the notice was paid. Wife of the tenant in chief who used to pay the rent was not examined. No rent receipt was filed by the defendant No.1. The two Courts below further found from the evidence on record that for non compliance of

mandatory provision of section 12(3)(b) the tenant was not entitled to statutory protection against eviction.

For the reasons given above, I do not find any merit in this revision which is hereby dismissed. Parties shall bear their own costs.

Sd/-
(D.C.Srivastava, J)

m.m.bhatt